



United States  
Department of  
Agriculture

Forest  
Service

Manti-La Sal  
National Forest

Supervisor's Office  
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2013 FEB -14 PM 1:54  
BLM - UT - 950

File Code: 2820

Date: February 1, 2013

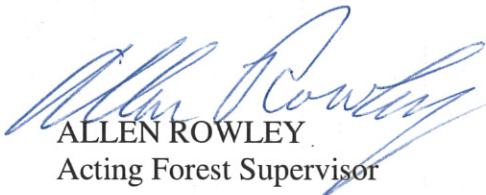
Mr. Kent Hoffman  
Deputy State Director  
BLM State Office  
PO Box 45155  
440 West 200 South, Suite 500  
Salt Lake City, UT 84101

Dear Kent:

This letter serves to document my consent to modify two federal coal leases by adding 320 acres to Lease # UTU-06039 and 860 acres to Lease # UTU-88554 with the requirement to enforce the stipulations identified in Appendix A of the "Deer Creek - Upper Cottonwood Two Lease Modifications to Federal Coal Leases UTU-06039 and UTU-88554 Environmental Assessment." Attached are copies of the Decision Notice and Finding of No Significant Impact and the Stipulations.

If you have any questions on this matter, feel free to contact me or Tom Lloyd at the address or phone number listed above.

Sincerely,

  
ALLEN ROWLEY  
Acting Forest Supervisor

Enclosures

cc: Patricia Clabaugh - Field Office Manager, BLM - Price Field Office, 125 S 600 W, Price, UT 84501, Dale Harber



BLM - UT - 950  
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## DECISION NOTICE

AND

## FINDING OF NO SIGNIFICANT IMPACT

### DEER CREEK – UPPER COTTONWOOD TWO LEASE MODIFICATIONS TO FEDERAL COAL LEASES UTU-06039 AND UTU-88554

Ferron-Price Ranger District  
Manti-La Sal National Forest  
Emery County, Utah

## **Authorities**

The primary authorities for issuing coal lease modifications are found in the EA, Section 1.5 and as restated below.

### ***Mining and Minerals Policy Act of 1970 and Mineral Leasing Act of 1920, as amended***

The Forest Service and BLM manage their minerals programs under guidance given in the Mining and Minerals Policy Act of 1970 which states in part that it is the "continuing policy of the federal government in the national interest to foster and encourage private enterprise in... (the) development of economically sound and stable domestic mining minerals and mineral reclamation industries... (and) the orderly and economic development of domestic mineral resources...." Further, federal mineral leasing follows the Mineral Leasing Act of 1920 as amended by the Federal Coal Leasing Amendments Act of 1976 (MLA), and specific procedures set forth in 43 CFR 3400.

Federal coal leasing follows the Mineral Leasing Act of 1920 (MLA) as amended by the Federal Coal Leasing Amendments Act of 1976 and specific procedures set forth in 43 CFR 3400.

These lease modification applications are being processed according to procedures set forth in 43 CFR 3432. Lease modifications can be non-competitive leasing actions. In this case, PacifiCorp applied for the modifications to add acreage to existing leases and no other coal company could obtain the rights to the coal if it is approved; therefore, this is a non-competitive leasing action.

Subsequent permitting actions to allow mining and changing of the approved mine permit boundary to include the modification area would be evaluated by the Utah Division of Oil, Gas, and Mining (UDOGM) under procedures set forth in 30 CFR PART 906.30 Appendix B. Adding this modification to the mine permit may also require approval from the USDI through the Office of Surface Mining, Reclamation and Enforcement (OSM).

### ***Energy Policy Act of 2005***

The purpose of the Energy Policy Act of 2005 was to ensure jobs for the future with secure, affordable, and reliable energy.

This Act Amends 30 U.S.C. 203(c)(4)(A) to "secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease...(3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)--(A) exceed 960 acres; or (B) add acreage larger than that in the original lease."

## **III. DECISION**

I have decided to select the Proposed Action Alternative as described in the EA (EA, Section 2.2) and summarized in Section V of this document. Selection of this alternative provides the BLM-Utah State Office my consent to lease NFS lands by including them in Federal Coal Leases, 320 acres to lease UTU-06039 and 860 acres lease UTU-88554, as described in the EA and as shown in Figure 1.2. My consent decision includes the application of terms and conditions, identified as stipulations, to protect surface resources on NFS lands (Appendices A of the EA).

This decision will be implemented through my issuance of a letter to the BLM State Office consenting to the lease modifications. This will be followed by BLM's action of



### ***Air Quality & Greenhouse Gas Emissions***

Review of the effects of this project on air quality and greenhouse gas emissions can be seen in Table 1.3 of the EA.

### ***Hydrology***

Projected impacts of the project on hydrological resources including groundwater quality and quantity and surface springs and seeps were evaluated.

It was identified that groundwater resources would be intercepted during mining operations; however, dewatering of this inactive-zone perched groundwater should not result in decreases to water quality and quantity in overlying active zone groundwater systems. Intercepted groundwater would be discharged from the Deer Creek Mine through approved Utah Pollution Discharge Elimination System (UPDES) discharge points into Deer Creek. This discharged water would be similar in quality to that currently being discharging from the mine. In the event that the quality of the discharged mine water exceeds standards set by the State of Utah the mine owner would be required to treat the water before it is released. Because the anticipated mining rate would not change and geologic conditions are believed to be similar to those in the parent lease areas, the discharge rate would likely remain unchanged.

It was also determined that negligible to no impacts to spring and seep discharge rates in the lease modification areas would result from shallow subsidence cracking anticipated. However, it is possible that spring discharge locations could move short distances if shallow subsidence cracks intersected the spring discharge locations.

After reviewing the predicted effects of the proposal on hydrological resources presented in the EA and summarized above and considering the required stipulations for the protection of hydrological resources (Stipulation 4, 8, 10, 18 and 19); consenting to the proposal will have negligible to no effect on surface and groundwater of the area.

### ***Roadless***

The entire 320 acres that would be added to UTU-06039 and approximately 10 acres of the northeast corner that would be added to UTU-88554 are located within the East Mountain Inventoried Roadless Area (IRA). These 330 acres would be subject to restrictions on road construction and timber harvest pursuant to rules and regulations of the Secretary of Agriculture pertaining to IRA management. This project is consistent with current direction.

The East Mountain IRA was inventoried in 1979 as part of Roadless Area Review and Evaluation (RARE II), but not carried forward for wilderness designation.

The decision to consent to the coal lease modifications with the potential for associated coal mining will not affect roadless status as subsidence does not create roads or remove timber. In addition, no post-leasing surface facilities are expected within the lease modification areas. In any event, the lease modifications are restricted by whatever roadless area management direction is in place and will be compliant with Forest Plan direction.

Tract Delineation Reports for modification of Federal Coal Leases UTU-06039 and UTU-88554. The MLNF Forest Plan was reviewed and this decision was determined to be consistent with it.

### ***How Considerations Were Weighed and Balanced In Arriving At the Decision***

The resource effects analyses presented in the EA (Table 2.1 and Chapter 4) describes potential impacts to surface resources from leasing as minor. Stipulations were identified and will be required for the protection of non-mineral resources including cultural and paleontological resources, threatened or endangered species, wildlife and its habitat, water resources, geologic hazards, and roadless areas. Because of the surface protections in place, and the potential effects from subsidence is minimal, I chose to consent to lease modifications as applied for by PacifiCorp to BLM.

My decision to consent to the lease modifications included evaluating the role and responsibility of the FS in meeting overall energy needs for the nation. This consideration, along with our legal responsibilities led me to the consent to the decision.

### ***Relationship to Public Involvement***

Public and agency comments were sought during preparation of the EA (refer to Section VI of this document and Section 1.7 and Chapter 5 of the EA). Using the comments from the public, environmental groups, other agencies, and those developed internally, the interdisciplinary team developed a list of issues to address (EA, Section 1.8):

The Forest Service addressed comments received during scoping on the project which are included in the EA in Sections 1.7 and 2.4. The manner in which I have considered specific public comments in my decision is described in this section and Section VI.

## **V. SUMMARY OF ALTERNATIVES CONSIDERED**

Two alternatives were considered and carried forward for detailed analysis in the EA (Sections 2.2 and 2.3). The selected action is the Proposed Action conditioned with stipulations. A summary of the Alternatives Considered in Detail in the EA follows:

### ***No Action Alternative***

Under this alternative, the FS would not consent to BLM issuing the modifications, and BLM would not modify the leases. Other resource management activities would continue. Selection of the No Action Alternative would not preclude the lands being considered for coal leasing in the future.

### ***Proposed Action Alternative***

Under the Proposed Action Alternative, the FS would consent to the BLM modifying two federal coal leases by adding 860 acres to UTU-88554 and 320 acres to UTU-06039 with stipulations (refer to Appendix A of the EA) for the protection of non-mineral resources. Based on FS consent, the BLM would modify the existing leases

The Proposed Action assumes a practical and economical mine plan scenario. The plan would allow for the logical progression of mining and planned sequenced main entry and gate road development for mining additional longwall panels within both proposed lease areas. As proposed, coal would be mined from two coal seams, the Blind Canyon and Hiawatha coal seams. The Blind Canyon coal seam would be the target coal seam for



## **VII. FINDING OF NO SIGNIFICANT IMPACT**

Based on my review of the EA, public comments on the EA, the agency responses to comments, resource analysis (EA, Sections 1.8, 2.5 and Chapters 3 and 4, and project file), the supporting project record, and upon my analysis immediately below, I find that actions resulting from my decision do not constitute major Federal actions significantly affecting the quality of the human environment, as defined in the Code of Federal Regulations Title 40 Part 1508, Section 27 (40 CFR 1508.27) in terms of either context or intensity; and therefore, an environmental impact statement need not be prepared.

### ***Context***

#### ***Locality***

This decision would commit approximately 1180 acres of NFS lands on the Ferron/Price Ranger District to mineral leasing. However, under the practical mine plan scenario analyzed (EA, Section 2.2.1) no surface development incidental to underground mining will be required.

Lands in the coal lease modifications areas are managed for multiple uses. Lands adjacent to the lease modifications have had underground coal mining for many decades. Given the extent of other activities occurring in the vicinity of the coal lease modifications, leasing and potential subsequent disturbance (minor subsidence) would not appreciably add to existing surface uses. Post-leasing surface activity would be identical to existing activities and it would continue to be managed through lease stipulations to reduce overall effects. Therefore, the effects on public land and users over both the short-term and long-term would remain consistent with that which is presently occurring. No short- or long-term significant impacts are expected as a result of this decision in the local context (EA, Chapter 4).

#### ***Affected Interests and Affected Region***

Affected interests for this project are ranchers with grazing permits in the project area; people using the area for dispersed recreation, wildlife watching and hunting; public and Forest road users; residents in local counties; and adjacent private landowners. Concerns raised focus mainly on local issues in the immediate vicinity of the lease modifications. The decision to consent to leasing allows continued use by current permit holders and recreational users of the area. Monitoring and mitigation measures in the form of lease stipulations have been identified and prescribed to protect and preserve other forest uses in the immediate area. Other required permits would specify terms of use to further reduce effects on other forest uses. Emery County will receive economic benefit (royalties, jobs, local expenditures, etc.) from the lease modifications consistent with existing conditions. No short- or long-term significant impacts on affected interests are expected as a result of this decision in the regional context (EA, Chapter 4).

#### ***Society as a Whole***

This decision provides the opportunity for federal coal resources to be made available for commercial production that, in turn, would be used to meet U.S. demand for compliant and super-compliant coal to aid in meeting air quality standards in electrical generation and further maintaining affordable energy supplies. While this decision could result in disturbance of the land surface from minor subsidence, requirements for careful project design, lease stipulations, and ultimate reclamation would keep these effects to negligible to low levels. Therefore, no negative impacts to society as a whole are

This decision is not unique for the MLNF from the standpoint of understanding potential effects. The MLNF has decades of experience analyzing and managing similar projects that involve mineral leasing and subsequent post-lease activity. The MLNF has experience implementing and monitoring similar projects, the effects of which have been found to be reasonably predictable. Based on review of this analysis and compared to our local conditions, the risks associated with leasing and post-lease activities and associated operations are understood, and can be evaluated and reasonably predicted. No effects from this decision would be classified as highly uncertain or involving unique or unknown risks. The intensity of this factor does not require documentation in an EIS.

***Consideration of the Degree to Which the Action May Establish a Precedent for Future Actions with Significant Effects or Represents a Decision in Principle about a Future Consideration***

Consenting to leasing the modification area will not create a precedent for future similar leasing actions. The MLNF Forest Plan acknowledges and allows for coal leasing and resource development in areas where such activities would be consistent with the Plan. Further, my decision follows the legal direction for coal resource management (EA, Section 1.5 & 1.6). Because mineral leasing is a discretionary decision on the part of the surface managing agency, any future lease proposals would have to be evaluated on their own merits based on the issues and effects related to the location, timing and intensity of each action. My decision does not set a precedent or represent a decision in principle about a future consideration; therefore, documentation in an EIS is not required.

***Consideration of the Action in Relation to Other Actions with Individually Insignificant but Cumulatively Significant Impacts***

The lands in proximity to the coal lease modifications are managed for multiple uses or are developed for public access and private use. Since leasing itself does not impart specific direct or indirect effects and post-lease activities are projected to be of limited scale, minimal individual effects and minimal cumulative effects are expected when added to the existing situation and other potential activities (EA, Chapter 4). The proposed action will not result in significant effects.

***Consideration of the Degree to Which the Action May Adversely Affect Areas or Objects Listed in or Eligible for Listing in the National Register Of Historic Places or May Cause Loss or Destruction of Significant Scientific, Cultural, or Historical Resources.***

The project record and literature reviews support that heritage or cultural resources will not be affected by the proposed action as underground mining will cause little to no ground disturbance nor would it lead to direct or indirect impacts to sites, if any actually exist, in the lease modifications (EA, Table 1.3 and project file). SHPO consultation was not necessary based on negative findings (EA, Table 1.3).

***Consideration of the Degree to Which the Action May Adversely Affect an Endangered or Threatened Species or Its Habitat Has Been Determined Not to be Critical Under The Endangered Species Act.***

A Biological Assessment (BA) was prepared for this decision (EA, Sections 3.4 and 3.5, 4.4 and 4.5, and Project File). All known endangered or threatened species in the area were considered. The BA found that, since there is no surface activity proposed for this project, possible subsidence effects are insignificant and discountable and there are no water depletions or diversions associated with this project, there would be no impact to



### ***Surface Mining Control and Reclamation Act of 1977***

The Surface Mining Control and Reclamation Act of 1977, as amended, (SMCRA) gives OSMRE primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations in the United States. Pursuant to Section 503 of SMCRA, UDOGM developed, and the Secretary of the Interior approved, Utah's permanent regulatory program authorizing UDOGM to regulate surface coal mining operations and the surface effects of underground coal mining on private and State lands within the State of Utah. Under Section 523(c) of SMCRA, UDOGM entered into a cooperative agreement with the Secretary of the Interior authorizing UDOGM to regulate surface coal mining operations and the surface effects of underground coal mining on Federal lands within the State. My decision is consistent with this act and cooperative agreements.

### ***Energy Policy Act of 2005***

The purpose of the Energy Policy Act of 2005 was to ensure jobs for the future with secure, affordable, and reliable energy.

This Act Amends 30 U.S.C. 203(c)(4)(A) to "secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or cornering to those embraced in the lease...(3) In no case shall the total area added by modifications to an existing coal lease under paragraph (1)--(A) exceed 960 acres; or (B) add acreage larger than that in the original lease." My decision is consistent with this Act.

### ***Clean Air Act of 1955, as amended 1977***

This Clean Air Act (CAA) required States to develop plans to implement, maintain, and enforce primary and secondary ambient air quality standards for any criteria air pollutants, and called federal agencies to prevent deterioration of air quality. Effects on air quality as a result of this project were analyzed and showed that this project will have negligible effects on air quality. Further, PacifiCorp is required to hold and maintain state air quality permits for their activities under the CAA. This decision is consistent with this Act.

### ***Clean Water Amendments of 1972 (Clean Water Act)***

This Act requires State and Federal agencies to control and abate water pollution. This project was designed to comply with this Act (EA, Sections 2.5, 3.3, and 4.3) through the inclusion of stipulations for surface water, water depletions, baseline data and monitoring and further compliance with all state and local laws. This decision is consistent with this Act.

### ***Executive Order 11990 and 11988***

The management of wetlands and floodplains are subject to Executive Orders 11990 and 11988, respectively. The purpose of the EOs are to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative. This order requires the Forest Service to take action to minimize destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. In compliance with this order, Forest Service direction requires that an analysis be completed to determine whether adverse impacts would result (EA, Chapter 4). The project was designed to avoid impacts to wetlands and floodplains through the addition of lease stipulations. My decision is consistent with these orders.



215.9 (c) (1)). BLM decision making relating to leasing these lands could occur thereafter.

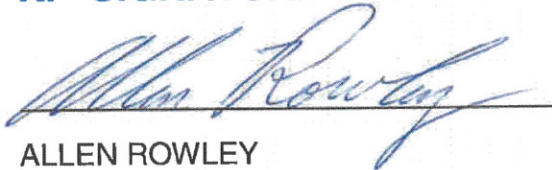
### ***Administrative Review or Appeal Opportunities***

This decision is not subject to appeal as a Notice of Proposed Action and Opportunity to Comment related to the project was published in the newspaper of record and no substantive comments expressing concerns were received during the comment period (36 CFR 215.12 (e)(1)).

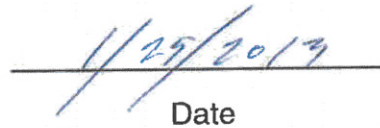
### ***Contact***

For more information about this project, contact Rob Hamilton, 115 E. 900 N., Richfield, UT 84701; phone 435-896-1022 or [rhamilton@fs.fed.us](mailto:rhamilton@fs.fed.us).

## **X. SIGNATURE AND DATE**



ALLEN ROWLEY  
Acting Forest Supervisor  
Manti-La Sal National Forest

  
Date

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal

## **EAST MOUNTAIN STANDARD STIPULATIONS FOR LEASE MODIFICATIONS AND LEASE READJUSTMENTS**

1. **Conformance with OSM Laws** – In accordance with Sec.523 (b) of the “Surface Mining Control and Reclamation Act of 1977”, surface mining and reclamation operations conducted on this lease are to conform with the requirements of this Act and are subject to compliance with Office of Surface Mining regulations, or as applicable the Utah program approved under cooperative agreement in accordance with Sec. 523 (c). The United States Government does not warrant that the entire tract will be susceptible to mining.
2. **Cultural and Paleontological Resources** – Before undertaking activities that may disturb the surface of previously undisturbed leased lands, the Lessee may be required to conduct a cultural resource inventory and a paleontological appraisal of the areas to be disturbed. These studies shall be conducted by qualified professional cultural resource specialists or qualified paleontologists, as appropriate, and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified cultural or paleontological resources.

If cultural resources or paleontological remains (fossils) of significant scientific interest are discovered during operations under this lease, the Lessee prior to disturbance, shall immediately bring them to the attention of the appropriate authorities. Paleontological remains of significant scientific interest do not include leaves, ferns or dinosaur tracks commonly encountered during underground mining operations.

The cost of conducting the inventory, preparing reports, and carrying out mitigating measures shall be borne by the Lessee.

3. **Threatened, Endangered Species and Migratory Birds** – If there is reason to believe that Threatened or Endangered (T&E) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the Lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance.

The cost of conducting the inventory, preparing reports and carrying out mitigating measures shall be borne by the Lessee.

4. **Baseline Resource Data** – The lessee shall be required to perform a study to secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area. Existing data may be used if such data are adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the interrelationship of the geology, topography, surface and ground water hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.



5. **Powerline Location and Large Bird Protection** – Powerlines used in conjunction with the mining of coal from this lease shall be constructed so as to provide adequate protection for raptors and other large birds. When feasible, powerlines will be located at least 100 yards from public roads.
6. **Mine Site Location and Development** – The limited area available for mine facilities at the coal outcrop, steep topography, adverse winter weather, and physical limitations on the size and design of access roads, are factors which will determine the ultimate size of the surface area utilized for the mine. A site-specific environmental analysis will be prepared for each new mine site development and for major modifications to existing developments to examine alternatives and mitigate conflicts.
7. **Visual Resource Protection** – Consideration will be given to site selection to reduce adverse visual impacts. Where alternative sites are available, and each alternative is technically feasible, the alternative involving the least damage to the scenery and other resources shall be selected. Permanent structures and facilities will be designed and screening techniques employed, to reduce visual impacts, and where possible, achieve a final landscape compatible with the natural surroundings. The creation of unusual, objectionable, or unnatural landforms and vegetative landscape features will be avoided.
8. **Monitoring** – The Lessee shall be required to establish a monitoring system to locate, measure, and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data.
9. **Dust Control** – The Lessee shall provide for the suppression and control of fugitive dust on haul roads and at coal handling and storage facilities. On Forest Development roads (FDR), Lessees may perform their share of road maintenance by a commensurate share agreement if a significant degree of traffic is generated that is not related to their activities.
10. **Subsidence** – Except at locations specifically approved by the Authorized Officer, with concurrence of the Forest Service, underground mining operations shall be conducted in a manner so as to prevent surface subsidence that would: (1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, (2) cause damage to existing surface structures, and (3) damage or alter the flow of perennial streams. The Lessee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.
11. **Surface Breakouts** – In order to avoid surface disturbance on steep canyon slopes and to preclude the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specifically approved locations.

12. **Timber Removal** – If removal of timber is required for clearing of construction sites, etc., such timber shall be removed in accordance with the regulations of the surface management agency.
13. **Underground Mining** – The coal contained within, and authorized for mining under this lease, shall be extracted only by underground mining methods.
14. **Surface Improvement Protection** – Existing Forest Service owned or permitted surface improvements will need to be protected, restored, or replaced to provide for the continuance of current land uses.
15. **Wildlife Area Protection** – In order to protect big-game wintering areas, elk calving and deer fawning areas, sage grouse strutting areas, and other critical wildlife habitat and/or activities, specific surface uses outside the mine development area may be curtailed during specified periods of the year.
16. **Timely Facility Removal** – Support facilities, structures, equipment, and similar developments will be removed from the lease area within two years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the lease form is applicable. Disturbed areas and those areas previously occupied by such facilities will be stabilized and rehabilitated, drainages re-established, and the areas returned to an acceptable post-mining land use.
17. **Replacement of Land Survey Markers** – The Lessee, at the conclusion of the mining operation, or at other times as surface disturbance related to mining may occur, will replace all damaged, disturbed or displaced corner monuments (section corners, quarter corners, etc.), their accessories and appendages (witness trees, bearing trees, etc.), or restore them to their original condition and location, or at other locations that meet the requirements of the rectangular surveying system. This work shall be conducted at the expense of the Lessee, by the BLM, to the standards and guidelines found in the Manual of Surveying Instructions, United States Department of the Interior
18. **Replacement of Affected Surface Water** – The Lessee, at its expense, will be responsible to replace any surface and/or developed ground water sources identified for protection, that may be lost or adversely affected by mining operations, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, fishery habitat, livestock and wildlife use, or other land uses (authorized by 36 CFR 251).
19. **Compliance with USDA Rules** – The Licensee/Permittee/Lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the license/permit/lease. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of Interior, (2) uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by



the Secretary of Interior, and (3) use and occupancy of the NFS not authorized by a permit/operation plan approved by the Secretary of Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor  
Manti-La Sal National Forest  
599 West Price River Drive  
Price, Utah 84501  
Telephone No.: 435-637-2817

who is the authorized representative of the Secretary of Agriculture.

20. **Recoverable Coal** – Notwithstanding the approval of a resource recovery and protection plan by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery [as defined at 43 CFR §3480.0-5(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operation, the operator shall submit appropriate justification to obtain approval by the Authorized Officer (AO) to leave such reserves unmined. Upon approval by the AO, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the AO determines that the R2P2 modification will not attain MER resulting from changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a new R2P2 modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unminable or at such time that the Lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the ONRR demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

21. **Waste Certification** – The Lessee shall provide upon abandonment and/or sealing off a mined area and prior to lease termination/relinquishment, certification to the lessor that, based upon a complete search of all the operators records for the mine and upon their knowledge of past operations, there has been no **hazardous substances** per (40 CFR 302.4) or **used oil** as per Utah State Management Rule R-315-15, deposited within the lease, either on the surface or underground, or that all remedial action necessary has been taken to protect human health and the environment with respect to any such substances remaining on the property. The back-up documentation to be provided shall be described by the lessor prior to the first certification and shall include all documentation applicable to the Emergency Planning and Community Right-to-know Act (EPCRA, Public Law 99-499), Title III of the Superfund Amendments and Reauthorization Act of 1986 or equivalent.
22. **Abandonment of Equipment** – The lessee/operator is responsible for compliance with reporting regarding toxic and hazardous material and substances under Federal Law and all associated amendments and regulations for the handling of such materials on the land surface and in underground mine workings.

The lessee/operator must remove mine equipment and materials not needed for continued operations, roof support and mine safety from underground workings prior to abandonment of mine sections. Exceptions can be approved by the Authorized Officer (BLM) in consultation with the surface management agency. Creation of a situation that would prevent removal of such material and by retreat or abandonment of mine sections without prior authorization would be considered a noncompliance with lease terms and conditions and subject to appropriate penalties under the lease.

23. **Underground Inspection** – All safe and accessible areas shall be inspected prior to being sealed. The lessee shall notify the Authorized Officer in writing 30 days prior to the sealing of any areas in the mine and state the reason for closure. Prior to seals being put into place, the lessee shall inspect the area and document any equipment/machinery, hazardous substances, and used oil that is to be left underground.

The purpose of this inspection will be: (1) to provide documentation for compliance with 42 U.S.C. 9620 section 120(h) and State Management Rule R-315-15, and to assure that certification will be meaningful at the time of lease relinquishment, (2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left underground. In addition, these items will be photographed at the lessee's expense and shall be submitted to the Authorized Officer as part of the certification. The abandonment of any equipment/machinery shall be on a case by case basis and shall not be accomplished unless the Authorized Officer has granted a written approval.